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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,256	05/25/2001	Casimer M. DeCusatis	FIS920010069US1 (14401)	3977

7590 05/23/2003

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EXAMINER

NGUYEN, TUAN M

ART UNIT

PAPER NUMBER

2828

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/865,256

Applicant(s)

DECUSATIS ET AL.

Examiner

Tuan M Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30,32-38,40 and 42-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30,32-38,40 and 42-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-30, 32-38, 40 and 42-51 have been considered but are moot in view of the new ground(s) of rejection.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-30, 32-38, 40 and 42-51 are provisionally rejected under the judicially created doctrine of double patenting over following: Claims 1-38 of copending Application No. 09/893,043; claims 1-26 of copending Application No. 09/893,125; claims 1-38 of copending Application No. 09/884,671; claims 1-20 of copending Application No. 09/944,276. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: Claims 1 and 18 are provisionally rejected under the judicially created

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doctrine of double patenting over claims 1-3 and 7 of copending Application No. 09/893,043; claims 1-2 and 12-13 of copending Application No. 09/893,125; claims 1-2, 7, 12, 34-35 and 37-38 of copending Application No. 09/884,671; and claims 1-3 and 20 of copending Application No. 09/944,276. Further claims 21 and 28 are provisionally rejected under the judicially created doctrine of double patenting over following: Claims 14-15 of copending Application No. 09/893,043; claims 23-25 of copending Application No. 09/893,125; claims 25-26, 29-30, 33 and 39 of copending Application No. 09/884,671; and claims 14-16 and 18 of copending Application No. 09/944,276.

Claims 1-3, 7 of copending Application No. 09/893,043; claims 1-2 and 12-13 of copending Application No. 09/893,125; claims 1-2, 7, 12, 34-35 and 37-38 of copending Application No. 09/884,671; claims 1-3, 20 of copending Application No. 09/944,276 recite a wavelength locked loop servo control circuit comprising:

- applying a dither modulation signal at a dither modulation frequency;
- converting a portion of dither modulated signal to an electric feedback signal;
- generating an error signal comprising a vector cross product of said feedback signal and said dither modulation signal;
- adjusting the peak spectrum function according to said error signal, wherein center wavelength of signal becomes aligned with said center wavelength of said wavelength selective means when a frequency characteristics of said feedback signal is two times said dither modulation frequency.

Claims 1 and 18 of this Application recite all limitations of the above copending applications. Further claims 14-15 of copending Application No. 09/893,043; claims 23-25 of

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copending Application No. 09/893,125; claims 25-26, 29-30, 33 and 39 of copending Application No. 09/884,671; and claims 14-16 and 18 of copending Application No. 09/944,276 recite a method for provide real time mutual alignment comprising every steps and elements as recited in claims 21 and 28 of this Application. Although, the claim language in not identical, the claims are not patentable distinct from each other.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Communication Information***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan M Nguyen whose telephone number is (703) 306-0247. The examiner can normally be reached on 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3329.



Paul Ip  
SPE  
Art unit 2828